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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 FAITHLIFE CORPORATION,

10 Plaintiff,

11 v.

12 PHILADELPHIA INDEMNITY
13 INSURANCE COMPANY,

14 Defendant.

Case No. C18-1679-RSL

ORDER DENYING MOTION
FOR PARTIAL SUMMARY
JUDGMENT AND FOR
RELIEF FROM DEADLINE

15 This matter comes before the Court on plaintiff Faithlife Corporation's "(1) Motion for
16 Partial Summary Judgment Re: Duty to Defend and Coverage by Estoppel, and (2) Motion for
17 Relief from Deadline" (Dkt. # 35). Having reviewed the submissions of the parties and the
18 remainder of the record, the Court finds as follows:

19 Plaintiff is a bible software company, and defendant Philadelphia Indemnity Insurance
20 Company is an insurance company. Defendant insured plaintiff under several commercial
21 liability insurance policies during a period spanning from approximately 2015 to 2018. See Dkt.
22 # 12 at 75. The two relevant policies include the 2016 policy, which covered the period from
23 December 17, 2015 to December 17, 2016, and the 2017 policy, which covered the period from
24 December 17, 2016 to December 17, 2017. See id. at 12-73, 75-136. The 2016 policy and 2017
25 policy both generally stated that plaintiff was required to report any claim to defendant as soon
26 as practicable after first becoming aware of the claim, but not later than 60 days after the
27 expiration of the policy. See id. at 43-53, 106-16.

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FROM DEADLINE - 1

1 On November 25, 2015, two of plaintiff's former employees filed administrative charges
2 against plaintiff with the Washington State Human Rights Commission and the Equal
3 Employment Opportunity Commission. See id. at 138-39, 141-42. Notice of each of the
4 administrative charges was mailed to plaintiff's human resources department on April 28, 2016.
5 See id. Plaintiff did not report the notices of administrative charges to defendant at that time.
6 See Dkt. # 1-3 at ¶¶ 9-10; Dkt. # 18-1 at ¶ 7. On March 22, 2017, the former employees filed an
7 employment discrimination case in Whatcom County Superior Court. See Dkt. # 12 at 144-58.
8 On March 28, 2017, plaintiff reported the employment discrimination claim to defendant. See
9 Dkt. # 13 at 4, 6.

10 On December 16, 2020, the Court issued an Order finding that the employment
11 discrimination claim was excluded from insurance coverage due to plaintiff's failure to timely
12 report it to defendant under the 2016 policy. Dkt. # 33 at 9. In that Order, the Court expressly
13 declined to rule on plaintiff's coverage by estoppel claim because plaintiff failed to raise the
14 claim in its cross-motion for summary judgment. See id. at 12 n.6. Rather, plaintiff raised
15 estoppel only in its response to defendant's motion for partial summary judgment, despite that
16 estoppel was not at issue in defendant's motion. Id. at 12, 12 n.6.

17 Plaintiff now moves the Court to grant partial summary judgment on the grounds that
18 defendant breached its duty to defend, and plaintiff is entitled to coverage by estoppel with
19 respect to the underlying lawsuit. Plaintiff filed the instant motion on January 27, 2021. Dkt.
20 # 35. Dispositive motions were due by March 3, 2020. Dkt. # 29. Plaintiff moves the Court to
21 hear the motion on the merits despite the lapse of the deadline because it "did not learn until
22 December 2020 that the Court would decline to resolve its coverage by estoppel argument."
23 Dkt. # 35 at 8. Before reaching the merits of plaintiff's motion, the Court considers whether to
24 excuse the tardy filing.

25 Under Rule 16(b)(4), case management deadlines established by the Court "may be
26 modified only for good cause and with the judge's consent." Fed. R. Civ. P. 16(b)(4). "The
27 good cause standard of Rule 16(b) primarily considers the diligence of the party seeking the

1 amendment. If that party was not diligent, the inquiry should end.” Branch Banking & Tr. Co.
2 v. D.M.S.I., LLC, 871 F.3d 751, 764 (9th Cir. 2017) (quoting Johnson v. Mammoth Recreations,
3 Inc., 975 F.2d 604, 609 (9th Cir. 1992)). “[C]arelessness is not compatible with a finding of
4 diligence and offers no reason for a grant of relief.” Johnson, 975 F.2d at 609. Plaintiff’s failure
5 to properly raise an issue in its prior timely motion for summary judgment exhibits carelessness.
6 Even if the Court had reached plaintiff’s estoppel argument presented in its response to
7 defendant’s motion for partial summary judgment *and* ruled in plaintiff’s favor, this would not
8 have provided a mechanism for the Court to grant plaintiff summary judgment on its estoppel
9 claim. See Dkt. # 18-3 (Plaintiff asking the Court to find that “the evidence of Philadelphia’s
10 conduct in this case raises an issue of fact regarding a coverage by estoppel defense”). Plaintiff
11 in essence argues that it was caught off guard by the Court’s failure to grant relief that it never
12 sought. This falls far short of a showing of good cause.

13 For all of the foregoing reasons, IT IS HEREBY ORDERED that plaintiff’s motion (Dkt.
14 # 35) is DENIED.

15 DATED this 6th day of July, 2022.

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18 Robert S. Lasnik
19 United States District Judge